

AMENDED IN ASSEMBLY AUGUST 31, 2005

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 826

Introduced by Senator Maldonado

February 22, 2005

An act to amend Section 12878.1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 826, as amended, Maldonado. State maintenance areas.

Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects. Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the Department of Water Resources in connection with the formation of a maintenance area on behalf of a federal flood control project unit. Existing law authorizes, but does not require, the Board of Reclamation or the department, as applicable, to proceed with the formation of a maintenance area if neither the board nor the department has given the nonfederal assurances to the United States that are required for the project.

This bill would require the board or the department, as applicable, to proceed with the formation of a maintenance area, in accordance with specified procedures, with regard to a project for which an application for the formation of a maintenance area has been submitted to the department by a local agency on or before July 1, 2003. The bill would require the local agency, before the department or the board forms a maintenance area, to enter into an indemnification agreement with the department.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12878.1 of the Water Code is amended
2 to read:

3 12878.1. (a) Whenever the department finds that a unit of a
4 project is not being operated or maintained in accordance with
5 the standards established by federal regulations or whenever the
6 governing body of a local agency obligated to operate and
7 maintain that unit by resolution duly adopted and filed with the
8 department declares that it no longer desires to operate and
9 maintain the unit, the department shall prepare a statement to that
10 effect specifying in detail the particular items of work necessary
11 to be done in order to comply with the standards of the federal
12 government together with an estimate of the cost thereof for the
13 current fiscal year and for the ensuing fiscal year.

14 (b) Subject to subdivision (c), but notwithstanding any other
15 provision of law, the board or the department is not required to
16 proceed in accordance with subdivision (a) or with the formation
17 of a maintenance area under this chapter if neither the board nor
18 the department has given the nonfederal assurances to the United
19 States required for the project. If neither the board nor the
20 department has given the nonfederal assurances to the United
21 States required for the project, the board or department may elect
22 to proceed with the formation if it determines that the formation
23 of a maintenance area is in the best interest of the state.

24 (c) (1) Subdivision (b) does not apply to any project for which
25 an application for the formation of a maintenance area under this
26 chapter has been submitted to the department by a local agency
27 on or before July 1, 2003.

28 (2) Subject to paragraph (3), the department or the board shall
29 proceed in accordance with subdivision (a) and with the
30 formation of a maintenance area in accordance with this chapter
31 for any project described in paragraph (1).

32 (3) Before the department or the board forms a maintenance
33 area pursuant to this subdivision, the local agency shall enter into
34 an agreement with the department pursuant to which the local
35 agency agrees to indemnify and hold and save harmless the state,

1 its officers, agents, and employees for any and all liability for
2 damages that may arise out of the planning, design, construction,
3 operation, maintenance, repair, or rehabilitation of the project, *or*
4 *the dissolution or modification of the maintenance area formed*
5 *pursuant to this subdivision.*

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